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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,471	09/20/2006	Yoshiaki Kumamoto	285480US0PCT	5691

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
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EXAMINER

NAMAY, DANIEL ELLIOT

ART UNIT	PAPER NUMBER
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3749

NOTIFICATION DATE	DELIVERY MODE
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09/30/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/566,471	Applicant(s) KUMAMOTO ET AL.	
	Examiner Daniel E. Namay	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10 and 12-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 11, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Applicant's response submitted on 28 July 2011 has been received, & its contents have been carefully considered. The Examiner wishes to thank the Applicants for the response to the Examiner's action. As indicated in, and in response to, Applicant's response:

- A. Claim 8 was amended;
- B. Claims 24 & 25 were added;
- C. The Objections to the Specification & Claims are withdrawn; &
- D. Claims 1-10, 24 & 25 are pending for review.

Note: The prior art relied upon in the following office action is as follows:

- | | |
|--|-------------------|
| - JP-2572621 | [JP-621] |
| - Kawajiri / Japan Pionics Co Ltd, JP-1-158762 | [Kawajiri ('762)] |
| - Matsui et al / Kao Corp., JP-2003-102761 | [Matsui ('761)] |
| - Minami, US #2002/0020406 | [Minami ('406)] |
| - Allison et al., US #3,448,005 | [Allison ('005)] |

Claim Rejections - 35 USC § 102 / 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 3749

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 5, 6, 11, 24 & 25 rejected under 35 U.S.C. 102(b) as being anticipated by **JP-621**. Alternatively, Claims 1, 2, 5, 6, 11, 24 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **JP-621** in view of **Minami ('406)**.

6. In Re Claim 1, **JP-621** discloses (**See attached English translation**): A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the heat generating sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), the warming device having a thickness of 0.1 to 10 mm (**P. 5, Ln. 15-20: 2-8mm, or 0.2-10mm, which are within the range of 0.1-10mm**), & a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm (**The device of JP-621, being produced in the same manner & with the same components as the article claimed, i.e. by papermaking, will inherently exhibit the same characteristics, e.g. the flexural strength of the molded article before & after heat generation ends, as those recited in the claim**).

A. Alternatively, **JP-621** discloses all aspects of the claimed invention, including (**See attached English translation**): A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the heat generating sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), the warming device having a

Art Unit: 3749

- thickness of 0.1 to 10 mm (**P. 5, Ln. 15-20: 2-8mm, or 0.2-10mm, which are within the range of 0.1-10mm**).
- B. However, **JP-621** fails to disclose: a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm.
- i. Nevertheless, **Minami ('406)** discloses a flexible heat generating medium (**Abstract**) that retains its flexibility before, during & after heat generation (**Para. 19**).
- ii. It would have been obvious to one of ordinary skill in the art at the time of the invention to maintain the flexibility, as taught by **Minami ('406)**, of the article of **JP-621** to prevent breakage & allow for the restoration of the original shape throughout the process (**Para. 19**).
- C. With respect to the specific range of flexural strength, it would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the flexural strength to maintain or maximize comfort levels, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Please note: The instant application has not disclosed any new or unexpected results (criticality) in the flexibility of the article for the range of flexural strength.
- D. With respect to the article being "prepared by papermaking": In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. the flexural (mechanical) strength of the warming device, does not depend on its method of production, i.e. papermaking. *In re Thorpe*, 227 USPQ 964, 966 (**Federal Circuit 1985**). **NOTE**: According to the disclosure, the

Art Unit: 3749

mechanical properties of the warming device are dependent upon the water content obtained by the dewatering process after completion of the papermaking process (**See Para. 89 on P. 25**).

7. In Re Claim 11, **JP-621 (See attached English translation)** discloses: A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the molded sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), the holder being partly formed of an air permeable sheet (**P. 6, Ln. 9-10: Holder formed of both air permeable and impermeable sheets**), there being no insulating sheet between the air permeable sheet & molded sheet (**Fig. 1, 2: No insulating layer is shown**), and a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm (**The device of JP-621, being produced in the same manner & with the same components as the article claimed, i.e. by papermaking, will inherently exhibit the same characteristics, e.g. the flexural strength of the molded article before & after heat generation ends, as those recited in the claim**).

- A. Alternatively, **JP-621** discloses all aspects of the claimed invention including (**See attached English translation**): A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the molded sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), the holder being partly formed of an air permeable sheet (**P. 6, Ln. 9-10: Holder formed of both air permeable and impermeable sheets**), there being no insulating sheet between the air permeable sheet & molded sheet (**Fig. 1, 2: No insulating layer is shown**).
- B. However, **JP-621** fails to disclose: a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm.

Art Unit: 3749

- i. Nevertheless, **Minami ('406)** discloses a flexible heat generating medium (**Abstract**) that retains its flexibility before, during & after heat generation (**Para. 19**).
 - ii. It would have been obvious to one of ordinary skill in the art at the time of the invention to maintain the flexibility, as taught by **Minami ('406)**, of the article of **JP-621** to prevent breakage & allow for the restoration of the original shape throughout the process (**Para. 19**).
- C. With respect to the specific range of flexural strength, it would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the flexural strength to maintain or maximize comfort levels, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Please note: The instant application has not disclosed any new or unexpected results (criticality) in the flexibility of the article for the range of flexural strength.
- D. With respect to the article being "prepared by papermaking": In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. the flexural (mechanical) strength of the warming device , does not depend on its method of production, i.e. papermaking. *In re Thorpe*, 227 USPQ 964, 966 (**Federal Circuit 1985**). **NOTE:** According to the disclosure, the mechanical properties of the warming device are dependent upon the water content obtained by the dewatering process after completion of the papermaking process (**See Para. 89 on P. 25**).

- E. With respect to the thickness of the warming device in the range of 1-30mm, it would have been an obvious matter of design choice since applicant has not disclosed that a thickness greater than 10mm solves any stated problem or is for any particular purpose (**Para. 34**) and it appears that the invention would perform equally well with a thickness in the range up to 10mm..
8. In Re Claim 2, **JP-621** discloses the thickness, in the range of 0.1-2.0mm, has been discussed in Claim 1 above (**As discussed in Claim 1 above**).
9. In Re Claim 5, **JP-621** discloses: the holder comprises an air permeable sheet and an air impermeable sheet joined together (**P. 6, Ln. 9-10: Holder formed of both air permeable and impermeable sheets**), and has a surfacing member disposed on the outer surface of each of the air permeable sheet and the air impermeable sheet (**Adhesive Layer #4**).
10. In Re Claim 6, **JP-621** discloses: the surfacing member on the air impermeable sheet retains a functional preparation (**The adhesion of Adhesive Layer #4 is a functional preparation**).
11. In Re Claims 24 & 25, **JP-621** discloses: the content of components other than the fibrous material is from 50% to 98 % by weight / the content of the fibrous material is from 2% to 50% by weight (**P. 5, Ln. 5-12: Proportion of fibrous material from 0.02-8% by weight, which includes values in the recited range**).
12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over **JP-621**, or alternatively over **JP-621** in view of **Minami ('406)**, as applied to Claim 1 above, and further in view of **Allison ('005)**.
13. In Re Claim 3, **JP-621** discloses all aspects of the claimed invention except: the fibrous material has a CSF of 600 ml or less.
- A. Nevertheless, **Allison ('005)** discloses producing a sheet product to a CSF of 430-450 ml (**Col. 5, Ln. 62-64**).

Art Unit: 3749

- B. It would have been obvious to one of ordinary skill in the art at the time of the invention to produce the device of **JP-621** with the CSF of **Allison ('005)** to impart an appropriate strength and drainage characteristics.

14. Claim 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **JP-621**, or alternatively over **JP-621** in view of **Minami ('406)**, as applied to Claim 1 above, & further in view of **Matsui ('761)**.

15. In Re Claim 4, **JP-621** discloses all aspects of the claimed invention except: the molded sheet contains 50% by weight or more of the components other than the fibrous material.

- A. Nevertheless, **Matsui ('761)** discloses material component other than fibrous material being 50% or greater (**Para. 10-15**)
- B. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the non-fibrous components of **JP-621** at the percentage taught by **Matsui ('761)** to provide the desired / required amount of heat generation (**Para. 11**).

16. Claims 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **JP-621** in view of **Kawajiri ('762)**. Alternatively, Claims 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **JP-621** in view of **Minami ('406)**, and further in view of **Kawajiri ('762)**

17. In Re Claim 8, **JP-621** discloses (**See attached English translation**): A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the heat generating sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), and a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm (**The device of JP-621, being produced in the same manner & with the same components as the article claimed, i.e. by papermaking, will inherently**

Art Unit: 3749

exhibit the same characteristics, e.g. the flexural strength of the molded article before & after heat generation ends, as those recited in the claim).

- A. Alternatively, **JP-621** discloses all aspects of the claimed invention, including (**See attached English translation**): A warming device of sheet form (**P. 1, Ln. 7**) comprising a heat generating molded article prepared by papermaking (**P. 3, Ln. 13-18**) and containing (**See P. 1, CLAIM, Ln. 11-16; P. 2, Ln. 16-18; P. 3, Ln. 8-10; etc.**) an oxidizable metal (**Iron Powder**), a moisture retaining agent (**Activated Carbon**), and a fibrous material (**P. 4, Ln. 1-2**); and an air permeable holder holding the heat generating sheet (**#2; P. 2, Ln. 16-19; P. 6, Throughout; P. 9, Example 9**), except a flexural strength after heat generation comes to an end of 0.05 to 3.0 N/cm.
- i. Nevertheless, **Minami ('406)** discloses a flexible heat generating medium (**Abstract**) that retains its flexibility before, during & after heat generation (**Para. 19**).
- ii. It would have been obvious to one of ordinary skill in the art at the time of the invention to maintain the flexibility, as taught by **Minami ('406)**, of the article of **JP-621** to prevent breakage & allow for the restoration of the original shape throughout the process (**Para. 19**).
- B. **JP-621** fails to disclose: the warming device further comprising a non-liquid retentive, heat insulating sheet disposed in the holder.
- i. Nevertheless, **Kawajiri ('762)** discloses an insulating layer (**#1**).
- ii. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the insulating layer of **Kawajiri ('762)** into the article of **JP-621** to disperse the heat in the desired direction.
- C. With respect to the specific range of flexural strength, it would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the flexural strength to maintain or maximize comfort levels, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105

Art Unit: 3749

- USPQ 233. Please note: The instant application has not disclosed any new or unexpected results (criticality) in the flexibility of the article for the range of flexural strength.
- D. With respect to the article being "prepared by papermaking": In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. the flexural (mechanical) strength of the warming device, does not depend on its method of production, i.e. papermaking. ***In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985).*** **NOTE:** According to the disclosure, the mechanical properties of the warming device are dependent upon the water content obtained by the dewatering process after completion of the papermaking process (**See Para. 89 on P. 25**).
18. In Re Claim 9, **JP-621** discloses: the holder being partly formed of an air permeable sheet (**P. 3, Ln. 18-29: Holder formed of both air permeable and impermeable sheets**), & **Kawajiri ('762)** further discloses the heat insulating sheet (**#1**) not disposed between the air permeable sheet (**#3**) and the molded sheet (**#2**).

Response to Arguments

19. Applicants' arguments filed 28 July 2011 have been fully considered.
20. The arguments with respect to the objections to the claim & specification are persuasive, & the objections have been withdrawn.
21. With respect to the claim rejections & the combination of **JP-621** & **Minami ('406)** are not persuasive.
- A. In regards to the flexural strength: as stated above, the device of **JP-621** is prepared in the same manner & with the same components as recited in the claims. The device of **JP-621** would, therefore, inherently be similar to &

Art Unit: 3749

- exhibit similar characteristics to the recited device, including the flexural strength.
- B. As to the combination of **JP-621 & Minami ('406)**, & that there is no "design need or market pressure" indicated in the prior art, Examiner respectfully disagrees. Both pieces of art are in the field of exothermic heat generating articles that disclose the need to reduce discomfort in the field (See **JP-621**: P. 3, Ln. 4-8; P. 9, Ln. 12-19 (without discomfort when worn, e.g. by being flexible, & able to match shape & size, e.g. by being flexible); **Minami ('406)** as discussed above). Therefore, the modification of **JP-621** by **Minami ('406)** is considered valid by Examiner. Note that Applicants' usage of the term "flexural strength" appears to be a measurement of flexibility, which is disclosed as a critical characteristic in both **JP-621 & Minami ('406)**.
- C. With respect to the criticality of maintaining the flexural strength to prevent the device from becoming hard & feeling uncomfortable in long time use, as summarized on P. 14 of the response, both **JP-621 & Minami ('406)** disclose the desire to maintain flexibility during the entire cycle of the device, as discussed above.
- D. Applicants' also discuss Examiner's prior discussion of product-by-process claims in the previous office action. As indicated above, the attached translation of **JP-621** indicates that the heating device of **JP-621** is produced in the same manner as the application using the same components, as discussed above; therefore, the heating device of **JP-621** is either identical to, or an obvious variant of, the instant application and, consequently, renders the instant application unpatentable over the prior art, as cited by Applicants on P. 15 of the response.

Conclusion

22. The prior art made of record and not relied upon and is considered pertinent to applicant's disclosure is listed in the attached form PTO-892.

Art Unit: 3749

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel E. Namay whose telephone number is (571)270-5725. The examiner can normally be reached on Mon - Fri (Alt Fri) 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel E. Namay/
Examiner, Art Unit 3749

/STEVEN B. MCALLISTER/
Supervisory Patent Examiner, Art Unit 3749